

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

COWLITZ COUNTY, et al.,

Plaintiffs,

v.

UNIVERSITY OF WASHINGTON, et al.,

Defendants.

CASE NO. \_\_\_\_\_

NOTICE OF REMOVAL OF CIVIL  
ACTION

The United States hereby gives notice pursuant to 28 U.S.C. § 1446(a) of the removal of this action to this Court from the Superior Court of the State of Washington, in and for Cowlitz County, Washington (Cowlitz County Superior Court). Plaintiffs Cowlitz County and Cowlitz County Youth Services Center (Cowlitz County) seek a declaratory judgment authorizing the release of federal records pertaining to juvenile detainees in federal custody pursuant to a state records request by Defendants University of Washington and Angelina Snodgrass Godoy. The United States has intervened as a party to prevent the disclosure of these documents, as disclosure is prohibited under federal law.

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DEPARTMENT OF JUSTICE  
Civil Division  
Federal Programs Branch  
1100 L Street N.W.  
Washington, D.C. 20005  
(202) 305-8613

**FACTUAL BACKGROUND**

1  
2 In 2001, pursuant to its statutory authority under the Immigration and Naturalization Act  
3 (INA), 8 U.S.C. §§ 1231(g)(1)-(2) and 1103(a)(11), the Immigration and Naturalization Service  
4 entered into an “Intergovernmental Service Agreement for Housing Federal detainees” with  
5 Cowlitz County to provide detention and care of U.S. Immigration and Customs Enforcement  
6 (ICE) juveniles detained under the INA. In July 2018, Defendants submitted a public records  
7 request to Cowlitz County pursuant to Washington’s Public Records Act (PRA), RCW §  
8 42.56.080, *et seq.*, seeking the “jail files” of immigrant minors detained on behalf of ICE. Upon  
9 receipt and review of Defendants’ PRA request, ICE advised Cowlitz County that they were not  
10 authorized to release the requested “jail files” because they are federal records belonging to ICE,  
11 and the County was prohibited by law from disclosing them. *See* 8 C.F.R. § 236.6.

13 On February 1, 2019, Cowlitz County filed this lawsuit in Cowlitz County Superior  
14 Court, Case No. 19-2-00099-08, seeking a declaratory judgment sanctioning the release of the  
15 requested documents under state law. Compl. (Dkt. No. 1) (attached hereto as Ex. A). On May  
16 30, 2019, the United States filed an unopposed motion to intervene as a matter of right pursuant  
17 to Washington Superior Court Civil Rule 24(a), which mirrors Federal Rule of Civil Procedure  
18 24(a), as a party defendant in this action. Although the motion was initially unopposed, several  
19 months after its filing, Defendants filed an objection to the United States’ motion to the extent  
20 the United States sought intervention as a party defendant, rather than as a party plaintiff. Both  
21 Cowlitz County and the United States challenged Defendants’ position, asserting that Plaintiffs’  
22 claim presents a question of federal statutory interpretation, in which the United States’ interests  
23 are directly adverse to those of Plaintiffs.  
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1 Notwithstanding Cowlitz County's and the United States' agreement on that issue, the  
 2 court sided with Defendants. By order of December 10, 2019, and without issuing an opinion  
 3 setting forth any analysis, the court granted the United States' motion to intervene, but as a  
 4 plaintiff, not defendant.

### 5 **GROUND FOR REMOVAL**

6 In light of the United States' substantive position relative to the issue in dispute, removal  
 7 is appropriate. "A civil action . . . that is commenced in a State court and that is against or  
 8 directed to [the United States or any agency thereof] may be removed by them to the district  
 9 court of the United States for the district and division embracing the place wherein it is pending."  
 10 28 U.S.C. § 1442(a)(1). In applying the general standards for removal, the substantive  
 11 underpinnings of the original claim for relief controls, particularly when the existence of a  
 12 federal question provides a basis for removal. *See* 14C Charles Alan Wright & Arthur R. Miller,  
 13 FEDERAL PRACTICE AND PROCEDURE § 3734 (Rev. 4th ed.). Section 1442's purpose and history  
 14 confirm that the statute was meant to ensure as a matter of right that federal defenses raised by  
 15 federal actors are evaluated in a federal forum and "should not be frustrated by a narrow,  
 16 grudging interpretation" of the provision. *Willingham v. Morgan*, 395 U.S. 402, 407 (1969) ("In  
 17 cases like this one, Congress has decided that federal officers, and indeed the Federal  
 18 Government itself, require the protection of a federal forum.").

19 This case turns on a fundamental federal question—whether applicable state law is  
 20 preempted by federal law prohibiting the disclosure of the records at issue. Cowlitz County has  
 21 brought a claim "directed to" the United States by seeking a declaratory judgment authorizing  
 22 the disclosure of federal documents, which ICE asserts are prohibited from disclosure under  
 23 federal law. Compl. at 7-8 (prayer for relief). Substantively, Cowlitz County's desired outcome  
 24

1 in this case is directly adverse to the United States' interests. Accordingly, the United States  
2 removes this case to the United States District Court.

3 Pursuant to 28 U.S.C. § 1446(b), the filing of this notice is timely. Notice of removal  
4 may be filed within 30 days of receipt of an order or other paper from which it may first be  
5 ascertained the case is one which is or has become removable. *See* 28 U.S.C. § 1446(b). This  
6 action first became removable on December 10, 2019, when the Cowlitz County Superior Court  
7 entered the order granting the motion of the United States to intervene as a party. This filing is  
8 within 30 days of that order, and therefore this removal is timely.  
9

10 Pursuant to Local Rule CR 101(b)(2), a certificate of service which lists all counsel who  
11 have appeared in this action is herewith included. This Notice of Removal will be promptly filed  
12 with the clerk of the Cowlitz County Superior Court. *See* 28 U.S.C. § 1446(d). Pursuant to  
13 Local Rule CR 101(b)(1), a copy of the complaint is attached as Attachment A. No Jury  
14 Demand was filed in the state court; therefore, there is no such document to be filed  
15 contemporaneously with this notice of removal. *See* LCR (b)(3).  
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1 Dated: December 30, 2019

Respectfully submitted,

2 JOSEPH H. HUNT  
Assistant Attorney General

3 JACQUELINE COLEMAN SNEAD  
Assistant Branch Director

4  
5 s/ Alexis J. Echols  
ALEXIS J. ECHOLS  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street NW, Room 11304  
Washington, D.C. 20005  
Telephone: (202) 305-8613  
Facsimile: (202) 616-8460  
E-mail: alexis.j.echols@usdoj.gov

10 *Attorneys for the United States*

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Federal Programs Branch  
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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury that on this 30th day of December 2019, I electronically filed the foregoing "NOTICE OF REMOVAL OF CIVIL ACTION" with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants identified below.

I further certify under penalty of perjury that on this 30th day of December 2019, I caused to be e-mailed and placed in the United States mail (first-class, postage prepaid), a copy of the foregoing "NOTICE OF REMOVAL OF CIVIL ACTION" addressed as follows:

Douglas E. Jensen  
Hall of Justice – Civil Division  
312 S.W. First Avenue  
Kelso, Washington 98626  
jensend@co.cowlitz.wa.us

Eric M. Stahl  
Davis Wright Tremaine LLP  
920 Fifth Avenue, Suite 3300  
Seattle, Washington 98107  
ericstahl@dwt.com

Nancy S. Garland  
Washington Attorney General's Office  
University of Washington Division  
4333 Brooklyn Avenue NE, 18th Floor  
Seattle, Washington 98195-9475  
nancysg@uw.edu

s/ Alexis J. Echols  
ALEXIS J. ECHOLS